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OFFICE OF FEDERAL
ELECTION COMMISSION

April 16, 2012

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

VIA HAND DELIVERY

Re: MUR 6535; Complaint against Restore Our Future, Inc.

Dear Mr. Jordan:

We are writing this letter on behalf of Restore Our Future, Inc., and Charles R. Spies, in his official capacity as Treasurer ("ROF" or the "Respondents") in response to the Complaint filed in the above-referenced matter by the self-styled campaign "reform" group, the Campaign Legal Center ("CLC"). The Complaint was clearly filed for publicity, and is based solely on speculation and innuendo. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be immediately dismissed.

As an initial matter, we respectfully request that Vice Chair Ellen Weintraub recuse herself from MUR 6535 due to her previous and continued outspokenness against the emergence and existence of independent expenditure-only committees (i.e. Super PACs). Vice-Chair Weintraub's negative predisposition against Super PAC's and their constitutional ability to raise and spend unlimited amounts to influence federal elections is well-documented, and we strongly believe ROF will be unable to receive a fair and impartial consideration from her in this matter. For that reason, we are filing the attached Motion for Recusal and supporting documentation.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the

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Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

In this case, despite CLC's vast resources and motivation to create some sort of scenario in the Complaint that, if proven, would constitute a violation of the Act by ROF, it is unable to provide any evidence that ROF has violated the Act other than its own self-serving and politically charged conclusions about ROF's activities and political communications. It should be noted that CLC frequently makes public its disagreements with First Amendment protections for political speech¹ and the organization and its staff are committed advocates for restrictions on political speech. As such, CLC raises funds for their pro-regulatory lobbying efforts through periodically filing FEC complaints hyperbolically asserting violations of the Act by (usually) conservative-leaning organizations and candidates. We note this ideological agenda and practice not to pass judgment upon CLC, but instead to reinforce CLC's motivation in filing the vast majority of its complaints with the Commission.

The current Complaint is no different, as it once again relies on unsupported allegations and innuendo, this time from a Politico blog and CLC's own politically motivated conclusions about one of ROF's television advertisements and a different television advertisement² containing footage that was run by Mitt Romney's previous 2007-2008 Presidential Campaign approximately 5 years ago. CLC's accusations are without legal or factual support. Each allegation is addressed in turn below.

1. ROF has not financed the dissemination, distribution, or republication of any campaign materials prepared by candidate Mitt Romney or his agent(s) and has therefore not made an in-kind contribution to Mitt Romney.

CLC hyperbolically claims that, "based on published reports, complainant has reason to believe that Restore Our Future financed the dissemination, distribution, or republication of campaign materials prepared by candidate Mitt Romney or his agent(s)." Complaint at 1. Specifically, the Complaint asserts that "[b]ased on published reports regarding the ads 'The Search' and 'Saved,' complainant has reason to believe that Restore Our Future has financed the republication of an ad 'prepared by' presidential candidate Mitt Romney or his agent(s)."

¹ See Paul Blumenthal, *Super PAC Corporate Donations: Not All Contributions Are Equal*, HUFFINGTON POST, Aug. 11, 2011, available at http://www.huffingtonpost.com/2011/08/11/super-pac-corporate-donations_n_924865.html. ("We are just seeing the beginning of what could turn out to be an onslaught of corporate money being injected into our congressional and presidential campaigns," Democracy 21 President Fred Wertheimer told The Huffington Post. "The *Citizens United* decision has opened up Pandora's Box here.") and *Id.* ("The Campaign Legal Center's FEC Program Director, Paul S. Ryan, previously told The Huffington Post, 'There's a big difference between humans and corporations that the Supreme Court ignored in their *Citizens United* decision.'")

² See Dan Eggen, *Two Ads Aired 5 Years Apart Spark Fight Over Election Rules*, WASH. POST, Feb. 29, 2012, at A17, available at http://www.washingtonpost.com/politics/the-influence-industry-two-ads-aired-five-years-apart-spark-fight-over-election-rules/2012/02/28/g1QAFpX5iR_story.html. ("...a number of details are different, including imagery used to depict New York and the specific shots showing Romney.")

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Complaint at 5. In making this assertion, CLC cites Section 109.23 of the Commission's regulations, which states:

[t]he financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure.

11 CFR 109.23(a)

The Complaint goes on to present several selective quotes from the Explanation and Justification for Coordinated and Independent Expenditure Rulemaking from 2003 as purported legal justification for its specious conclusions, as well as a list of exceptions to the republication rules, as set forth in Section 109.23(b). Yet, in propagating its politically charged legal theories, CLC has failed to acknowledge the simple fact that Mitt Romney, as a candidate for President in 2012, or agents of this candidate and/or his current campaign, had nothing to do with the preparation of ROF's current television advertisement "Saved."

The Commission's regulations define the term "candidate" as "an individual who seeks nomination for election, or election, to federal office." 11 CFR 100.3(a). Clarifying the timing for "candidate" status, Section 100.3(b) explains that:

For purposes of determining whether an individual is a candidate under this section, contributions or expenditures shall be aggregated on an election cycle basis. An election cycle shall begin on the first day following the date of the previous general election for the office or seat which the candidate seeks, unless contributions or expenditures are designated for another election cycle. For an individual who receives contributions or makes expenditures designated for another election cycle, the election cycle shall begin at the time such individual or any other person acting on the individual's behalf, first receives contributions or makes expenditures in connection with the designated election. The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.

11 CFR 100.3(b)

As CLC is undoubtedly aware, Mitt Romney ran for President in 2007 and 2008. He filed his Statement of Candidacy for that race on January 3, 2007. In that Statement of Candidacy, Romney designated his principal campaign committee for the 2008 election. Ultimately, Romney was unsuccessful in his 2008 bid, losing to John McCain in the Republican Primary. Nevertheless, pursuant to Section 100.3(b), Romney's 2008 candidacy for President

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ended at latest on November 4, 2008. Over three years after the 2008 election, Romney decided to run for President again in the 2012 Presidential Election cycle. Accordingly, he filed his official Statement of Candidacy, designating his principal campaign committee for the 2012 election, on June 22, 2011. Therefore, pursuant to Section 100.3, Mitt Romney is currently a "candidate" for President until November 6, 2012, the date of this year's general election.

CLC bases its entire argument on the premise that ROF has "financed the republication of an ad 'prepared by' presidential candidate Mitt Romney or his agent(s)." However, CLC fails to account for the fact that the advertisement was not at all "prepared by" presidential candidate Mitt Romney, as "candidate" status is defined above, but rather was prepared and produced by Mitt Romney's prior candidacy and campaign in 2007. Paragraph (a) of 11 CFR 109.23 is specific in that it "addresses the financing of the dissemination, distribution, or republication of campaign materials prepared by the candidate, the candidate's authorized committee, or their agents." For purposes of the Act and the Commission's regulations, Mitt Romney as a "candidate" for President in 2008 is an entirely different entity from Mitt Romney as a "candidate" for President in 2012. Under CLC's flawed rationale, Mitt Romney's declaring himself a candidate in 2007 actually meant that he was filing papers to run for President in 2012.

In this case, "The Search" advertisement that is the subject of the Complaint was not prepared by Romney, as a current candidate for President, or his authorized committee, or his agents. Therefore, because ROF in its production of "Saved" has not financed republication of any footage or campaign materials prepared by a current "candidate" or campaign for federal office, it is not in violation of Section 109.23(a). Likewise, for these same reasons, ROF has not made a prohibited in-kind contribution to Mitt Romney's current presidential campaign.

In presenting such an unprecedented and unsupported argument, the Complaint identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented," and should be immediately dismissed. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

2. ROF purchased the rights to the footage in its "Saved" advertisement from the owner, Cold Harbor Films, and there was no coordination or contact with the Romney campaign.

Although it is clear that ROF has not financed any republication of campaign materials prepared by current Presidential candidate, Mitt Romney, or any "candidate," for that matter, it is important to emphasize that ROF has not and will continue to not coordinate any of its political communications with federal candidates. This is apparently a difficult concept for CLC to swallow, as it has consistently made baseless allegations and conclusions about Super PACs and their self-proclaimed role as "shadow candidate committees set up to evade the \$2,500 candidate contribution limit."³

³ Campaign Legal Center Press Release, *Double-Duty Donors, Part II: Large Numbers of Wealthy Donors Hit Legal Limit on Giving to Candidates, Turn to Presidential Super PACs in Continuing Trend*, Feb. 1, 2012, available at http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=1624:february-21-2012-double-duty-donors-part-ii-large-numbers-of-wealthy-donors-hit-legal-limit-on-giving-to-

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CLC continues its unsupported allegations by inferring that ROF may be in violation of the Commission's coordination regulations. In paragraph 13 of the Complaint, CLC states:

The Commission elaborated on the intersection between this 'dissemination, distribution, or republication' rule and the rule on 'coordinated communications' at 11 CFR 109.21, explaining: 'In the event that a campaign retains the copyright to its materials, and the campaign materials are thus not in the public domain as a matter of law, this means that the republisher would presumably have to obtain permission from the campaign to republish the campaign materials, raising issues of authorization or coordination.'

68 Fed. Reg. at 442-43.

In referencing the proposed public domain exception considered by the Commission in its coordinated communications rulemaking, CLC sets forth its own partisan-motivated conclusion that even though footage from "The Search" advertisement arguably has been in the public domain since the 2008 election cycle, ROF must have received explicit permission from the Romney campaign or its agent to use such footage, in violation of the coordinated communications regulations. Such a conclusion is false. In reality, ROF purchased a license to use the archival footage in "The Search" from its owner, Cold Harbor Films of Alexandria, VA. ROF purchased such footage from Cold Harbor Films in an arms-length transaction that was entirely permissible with the Act and the Commission's regulations.

It is also important to note that Cold Harbor Films is not a vendor for Romney's current campaign and consequently is not an "agent" of the campaign, as that term is defined in the Act and the Commission's regulations. Any communication ROF had with Cold Harbor Films to purchase rights to the foregoing footage was in no way in violation of the "common vendor" prong of the coordinated communications regulations.

In light of the foregoing, it is unquestionable that ROF did not coordinate any of its activities or communications with any federal candidate, including specifically the Romney for President campaign, as regards to its purchase and use of raw footage that was used in "The Search" in 2008 and its production and creation of its distinctly different advertisement "Saved" in 2011.

Once again, in making this contention, CLC presents "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." See MUR 4960, Statement of Reasons, *supra*.

[candidates-turn-to-presidential-super-pacs-in-continuing-trend&catid=63:legal-center-press-releases&Itemid=61](#) (comments by Paul S. Ryan, CLC Counsel).

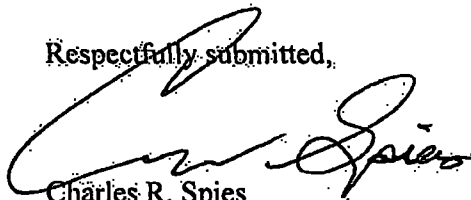
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Conclusion

The Campaign Legal Center in this matter has yet again invoked an administrative process as a means to continue its thinly veiled assault on the First Amendment and its political opponents' constitutional rights of political speech. The Complaint is based upon a novel and unprecedented legal theory reliant on a selective reading of the law and politically motivated and malicious speculation. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. Spies", is written over the typed name.

Charles R. Spies

Counsel and Treasurer to Restore Our Future, Inc.